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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Misc. Appeal No. 18/2004

APPELLANTS

1. Raman Shrivastava, age 20 years, S/o. Shri Nagendranath Shrivastava, R/o. Kedarpur, Town Ambikapur, Distt. Surguja **(Driver)**
2. Sanjay Shrivastava, S/o. Shri Radheshyam Shrivastava, age 24 years, Occupation Service, R/o. Near Mission Chowk Kedarpur, Town, P.S. & Tahsil Ambikapur, Distt. Surguja (C.G.)**(Owner)**

Versus

RESPONDENT

1. Ajit Gupta, S/o. Vijay Narayan Gupta, age 24 years, R/o. Khatikpara, Namnakala, P.S. & Tahsil Ambikapur, Distt. Surguja (C.G.) **(Claimant)**
2. Branch Manager, Oriental Insurance Company Limited, Banaras Chowk, Ambikapur, District Surguja (C.G.) **(Insurer)**

Misc. Appeal No. 648/2004

APPELLANT

1. Oriental Insurance Company Ltd. through its Divisional Manager, Division Office, Opposite High Court, Bilaspur (C.G.)

Versus

RESPONDENT

1. Ajit Gupta, S/o. Vijay Narayan Gupta, age 24 years, R/o. Khatikpara, Namnakala, P.S. & Tahsil Ambikapur, Distt. Surguja (C.G.) **(Claimant)**
2. Raman Shrivastava, age 20 years, S/o. Shri Nagendranath Shrivastava, R/o. Kedarpur, Nagar Ambikapur, Distt. Surguja **(Driver)**

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3. Sanjay Shrivastava, S/o. Shri Radheshyam Shrivastava, age 24 years, Occupation Service, R/o. Near Mission Chowk, Kedarpur, Nagar Ambikapur, Distt. Surguja (C.G.) **(Owner)**

27-4-2007

Shri A.K.Prasad, Advocate for appellants in M.A. No. 18/2004 and for respondent No.2 & 3 in M.A. No. 648/2004.

Shri Abhishek Sinha, Advocate for respondent No.2 in M.A. No. 18/2004 and for appellant in M.A. No. 648/2004.

Shri V.K.Pandey, Advocate for respondent No.1 in M.A. No. 18/2004 & M.A. No. 648/2004.

M.A. No. 18/2004 at the instance of driver and owner and M.A. No. 648/2004 at the instance of Insurance Company are being disposed of by this common judgment as both these appeals arise out of the same award dated 09.12.2003 passed by First Additional Motor Accident Claims Tribunal, Ambikapur-Sarguja in Claim Case No. 36/2003 whereby the learned Claims Tribunal has awarded a sum of Rs. 92,997/- to the claimant and has further held that 50% of the amount awarded shall be paid jointly and severally by driver Raman Shrivastava and owner Sanjay Shrivastava and rest 50% amount shall be paid by the Insurance Company.

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2. The only argument advanced by the respective parties was with respect to liability of satisfying the award and whether the driver Raman Shrivastava was having valid and effective driving license at the time of accident on 28.11.2002 and whether the owner Sanjay Shrivastava consciously allowed the driver Raman Shrivastava to drive the scooter who caused accident as a result of which the claimant sustained injuries over his right knee. On the basis of pleading of the respective parties learned Claims Tribunal framed Issue No.3 whether the non-applicant No.1 Raman Shrivastava was holding valid and effective driving license on the date of accident and Issue No.4 whether the non applicant No.2 Sanjay Shrivastava allowed non-applicant No.1 Raman Shrivastava to drive Bajaj Scooter in contravention of the conditions of Insurance Policy.

3. Learned counsel for the appellants/driver & Owner submitted that burden was on Insurance Company to prove that the appellant No.1 did not have valid and effective driving license at the time of accident and further that appellant No.2 Sanjay Shrivastava allowed the driver to drive vehicle consciously knowing that he doe not have valid and effective driving license. He further submitted that the appellant No.2 in his affidavit under Order 18 Rule 4 of the CPC before the Tribunal has categorically stated that he knew Raman Shrivastava who was resident of same locality and he frequently visited his house. He had verified from him about his

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driving license and he stated that he had driving license for scooter. He had also seen Raman Shrivastava driving scooter of his neighbour and he was efficient in driving scooter. In the circumstances after due verification he had entrusted scooter to Raman Shrivastava as he had no reason to disbelieve him that he did not have any driving license to drive a scooter. Reliance is placed in para 84 of the judgment in the matter of **National Insurance Company Ltd. Vs. Swaran Singh & Others reported in 2004 (3) SCC 297.**

4. On the other hand Shri Abhishek Sinha submitted that the defence of the Insurance Company before the Tribunal was specific that the driver of the vehicle did not have valid and effective driving licence on the date of accident. Owner Sanjay Shrivastava permitted him to drive the vehicle in violation of the conditions of Insurance policy. He further submitted that Insured had said in reply to the notice issued by the police under Section 91 of the Cr.P.C. that the driver had valid license and he had affixed photocopy of the license of his own driving license. Identical reply was given by the driver wherein the driver admitted that he did not have valid and effective driving license. He further submits that even after the reply filed by the Insurance Company the appellant did not amend the written statement filed before the Tribunal to incorporate the pleading that before allowing Raman Shrivastava to drive his scooter he had made all efforts to verify that he had valid

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आदेश पत्रक (पूर्वानुबद्ध)

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and effective driving license. Therefore in absence of pleading in written statement of owner and driver, statement of owner regarding seeing the driver frequently driving scooter during evidence, is of no significance. He further submits that the Insurer has examined Abraham Kerketta as a witness who has stated on oath that on the date of accident, the driver did not have driving license and he was not cross examined and his version stands unrepeated, therefore, the Insurance Company is not liable to pay compensation. Reliance is placed in the matter of **National Insurance Company Ltd., Vs. Laxmi Narayan Dhut** passed by the Supreme Court in Civil Appeal No. 1140/2007 dated 02.03.2007. It is submitted that the decision of Swaran Singh (Supra) has no application to the cases other than third party risk and in the instant case the dispute is between owner and Insurance Company and therefore ratio of the law laid down in Swaran Singh's case has no application.

5. I have heard learned counsel for the parties. I have perused the records as also the impugned award.

6. The appellants in their joint written statement before the Tribunal have denied the averments of claim petition. However no specific pleading with respect to circumstances under which the vehicle was entrusted to Raman Shrivastava by the owner after due verification has been pleaded whereas the Insurance

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Company in their written statement have admitted in para 16 that the vehicle in question was insured for the period 28.06.2002 to 27.06.2003and further in paragraph 24 & 25 it has been pleaded that non-applicant No 2 contravening the conditions of Insurance policy allowed the non-applicant No.1 who did not have valid and effective driving license on the date of accident. In these circumstances the insurer cannot be saddled with the liability of satisfying the impugned award. It is further argued that the Tribunal even after recording a finding that the vehicle was being driven by the driver who did not have valid and effective driving license at the time of accident and further recording a finding that the owner of the vehicle permitted the driver to drive the vehicle in contravention of the Insurance policy, has made the Insurance Company liable to satisfy 50% of the awarded sum which is contrary to the law as also the material available on record.

7. From perusal of affidavit of appellant No.2 particularly para 9 it is observed that Raman Shrivastava had given photocopy of the driving license however no document has been filed by the appellants before the Tribunal. On the contrary the counsel for the appellant has admitted that Raman Shrivastava did not have driving license. The statement on oath of this witness even before the Tribunal is to be examined in the light of the fact that owner in his statement has not pleaded a word that before allowing Raman Shrivastava he had verified from the driver that he had driving

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license to drive the vehicle. The Tribunal considering the conduct of appellant No.1 during the proceeding has categorically held that he deliberately avoided appearing before the Tribunal so that he is not required to lead evidence. Thus, after examining the evidence available on record, after going through the affidavit of Sanjay Shrivastava and his evidence and also going through the documentary and oral evidence produced by non-applicant No.3/Insurance Company, I am of the considered view that the argument that appellant No. 2 had allowed the driver to drive vehicle after due verification, cannot be accepted.

8. Section 5 of Motor Vehicles Act 1988 casts a duty on the owners of motor vehicle that they shall not permit any person who does not satisfy the provisions of Section 3 or Section 4 to drive the vehicle i.e. necessity of having driving license and person driving a motor vehicle in any public place has attained a statutory age of 18 years. In the instant case the driver of the scooter was not having valid and effective driving license and the owner consciously permitted the driver to drive the vehicle without due verification. The finding of the Tribunal that the Insurance Company shall be liable for payment of 50% of the awarded amount cannot be sustained.

9. In the result, M.A. No. 18/2004 preferred by the driver and owner fails and is dismissed.

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	10. The appeal M.A. No. 648/2004 preferred by the Insurance Company is allowed. The impugned award is modified to the extent that the appellant/Insurance Company is exonerated from the liability of payment of awarded amount and driver Raman Shrivastava and owner Sanjay Shrivastava are held jointly and severally liable to satisfy the entire amount awarded by the Tribunal. It is further directed that the Insurance Company shall be entitled to recover the amount if any, already paid by it. Sd/- DHIRENDRA MISHRA Judge	